TABLE OF CONTENTS

Page

Table of Contents ..... i-a

RE: KAIMOWITZ v. ORLANDO-Appeal, #96-2307
Published order, Sept. 15, 1997 ..... 1-a
Judgment, Sept. 15, 1997 ..... 5-a

RE: KAIMOWITZ v. ORLANDO--Trial Court, #95-204
Denial of Preliminary Injunction, Jan. 29, 1996 ..... 7-a

RE: KAIMOWITZ v. ORLANDO--Appeal , #96-2307
Denial of Rehearing, Nov. 20, 1997 ..... 12-a

RE: KAIMOWITZ, qui tam, ex rel U.S. Appeal #97-2777
Docketing of Appeal, Aug. 13, 1997 ..... 14-a

RE: NOYES v. ORLANDO--Appeal #97-2600
Court Mandate of Dismissal, Feb. 6, 1998 ..... 15-a
Court Entry of Dismissal, Feb. 6, 1998 ..... 16-a
Order of Denial of Enlargement of Time, Feb. 6, 1998 . 17-a

RE: NOYES v. ORLANDO--Trial Court, #97-254
Noyes Voluntary Notice of Dismissal, with 18-a
Final Order of Dismissal with Prejudice, May 5, 1997 . 19-a
Order Denial of Intervention, Apr. 14, 1997 ..... 20-a

RE: NOYES v. ORLANDO--Appeal/Petition #97-2458
Court Dismissal of Petition as Moot, Oct. 7, 1997 .... 21-a

RE: NOYES v. ORLANDO--Appeal, #97-2600
Denials of Rehearing/Motion to File, Mar. 2, 1998 ... 22-a
Docketing of Appeal, Oct. 10, 1997 ..... 23-a
Denial of Motion to Notify Adversaries, Dec. 2, 1997 . 24-a

Page

RE: KAIMOWITZ v. ORLANDO--Trial Court #94-284-J
Order Granting Change of Venue, Feb. 27, 1995 ..... 25-a

Re: KAIMOWITZ v. ORLANDO--Trial Court #95-204
Denial of Recusal, Mar. 15, 1995 ..... 29-a
Denial of Reconsideration of Venue, March 16, 1995 . 33-a
Denial of Sanctions, June 15, 1995 ..... 35-a

RE: KAIMOWITZ v. ORLANDO--Trial Court #95-204
Excerpts from an Orlando Arrest Report, Oct. 31, 1995 40-a

DOCKET ENTRY EXCERPTS. 41-a

RE: NOYES v. ORLANDO--Trial Court, #97-254
DOCKET ENTRY EXCERPTS 48-a

RE: NOYES JUDGE DISQUALIFICATION #88-962
Order of Sept. 27, 1993 ..... 52-a

Letter Re: Petition, Mar. 25, 1998 ..... 53-a

Extension of Time, to Mar. 17, 1998 ..... 54-a

Further Extension of Time, to Apr. 10, 1998 ..... 55-a

APPENDIX

Gabe KAIMOWITZ, Esquire, Qui Tam, Plaintiff-Appellant,

USA ex rel., Plaintiff,

v.

ORLANDO, FL, Rick Bernhardt, Orlando Neighborhood Improvement Corporation ("ONIC"), Defendants-Appellees,
No. 96-2307
Non-Argument Calendar

United States Court of Appeals, Eleventh Circuit.

Sept. 15, 1997.

Appeal from the United States District Court for the Middle District of Florida.

Before ANDERSON and BLACK, Circuit Judges, and CLARK, Senior Circuit Judge.

PER CURIAM:

This is an interlocutory appeal from the district court's denial of a motion for a preliminary injunction. Appellant Kaimowitz brought the underlying action, a *qui tam* claim against the City of Orlando, Florida, *inter alia*, alleging that the defendants knowingly and improperly obtained funds from several federal agencies for the development or improvement of properties in minority-concentrated areas of Orlando, Florida. While the action was pending, Kaimowitz moved for a preliminary injunction, stating that a city ordinance allowed members of the public to speak for five minutes each at the conclusion of city council meetings on any subject, and gave the city counsel and the mayor the authority to enlarge the five-

the city counsel and the mayor the authority to enlarge the five-minute time-limit. He alleged that the mayor and the city council refused to let him speak beyond the five-minute limit and, on one occasion when he did not stop speaking after the time limit, had the police forcibly remove and restrain him until the city council meeting concluded. Kaimowitz asked the district court to grant an injunction denying the mayor's right to enforce the five-minute time limit, stating that the time limit chilled his First Amendment right to free speech. He also asked the district court to declare the ordinance unconstitutional, because the authority to extend the five-minute limit could be used arbitrarily to permit those in agreement with the city leaders to continue speaking while the denial of an extension would silence opposition.

The district court denied the motion for a preliminary injunction, finding that the injunction was not related to the *qui tam* action, and that it would be unnecessarily confusing to allow Kaimowitz to bring a personal action along with an action on behalf of the government. The district court directed Kaimowitz to file his individual claims in a separate action.

On appeal, Kaimowitz raises three issues: (1) the district court erred in denying his motion to amend his complaint; (2 the district court erred in denying his motion for a preliminary injunction because restraint is necessary to keep the defendants from intimidating him; and (3) the district court erred in failing to hold a hearing on his motion for an injunction.

Any review of the district court's denial of Kaimowitz' motion to amend the complaint is premature. This case is before the court as an interlocutory appeal from the district court's order denying Kaimowitz' request for a preliminary injunction. The order is immediately appealable under 28

U.S.C. §1292(a)(1), but the scope of the court's jurisdiction is limited to matters directly related to the denial of injunctive relief.[1] The issues underlying the motion for a preliminary injunction differ from the issues raised in the *qui tam* action; in addition, there is nothing for the court to review because the district court has not ruled on the *qui tam* claim. Consequently, this court lacks jurisdiction under §1292(a)(1) to review the district court's denial of Kaimowitz' motion to amend his complaint.

This Court reviews the district court's denial of a preliminary injunction under an abuse of discretion standard.[2] A preliminary injunction is always appropriate to grant immediate relief of the same character as that which may be granted finally.[3] A district court should not issue an injunction when the injunction in question is not of the same character, and deals with a matter lying wholly outside the issues in the suit.[4] Here the suit is one for damages on a claim of fraud. In his injunction Kaimowitz sought equitable relief regarding a First Amendment issue, but that relief was not of the same character that could be granted finally, and dealt with a matter

---

1--See *Callaway v. Block*, 763 F.2d 1283, 1287, n. 6 (11th Cir. 1985) ("As a general rule, when an appeal is taken from the grant or denial of a preliminary injunction, the reviewing court will go no further into the merits than is necessary to decide the interlocutory appeal").

2--*Mitsubishi Int'l Corp. v. Cardinal Textile Sales, Inc.*, 14 F.3d 1507, 1517 (11th Cir. 1994), cert. denied, 513 U.S. 1146, 115 S.Ct. 1092, 130 L.Ed.2d 1061 (1995); see also *Cafe 207, Inc. v. St. Johns County*, 989 F.2d 1136, 1137 (11th Cir. 1993), noting that preliminary injunction is a "drastic remedy").

3--*De Beers Consol. Mines v. U.S.*, 325 U.S. 212, 220, 65 S.Ct. 1130, 1134, 89 L.Ed. 1566 (1945)(emphasis added).

4--*Id.*

that was wholly outside of the issues in the suit. The district court did not err in denying the motion for an injunction.

As to Kaimowitz' contention that district court was required to hold an evidentiary hearing, the Federal Rules of Civil Procedure state only that "[n]o preliminary injunction shall be issued without notice to the adverse party,"[5] and do not expressly require a hearing on every motion for injunctive relief.[6] Generally, evidentiary hearings are required prior to the issuance or denial of a motion for preliminary injunction only where there is a presumption of irreparable harm, as in a Title VII employment discrimination case.[7] Because there is no presumption of irreparable harm in this case, the district court did not err in not holding a hearing.

AFFIRMED.

THIS PER CURIAM RULING HAS BEEN PUBLISHED: *KAIMOWITZ v. ORLANDO*, 122 F.3d 41 (11th Cir. 1997).

5--Fed.R.Civ.P. 65(a).

6--*See Baker v. Buckeye Cellulose Corp.* 856 F.2d 167, 169 (11th Cir. 1988).

7--*See id.*

UNPUBLISHED
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 96-2307

FILED
U.S. COURT OF APPEALS

District Court No. 95-204-Civ

SEP 15 1997
MIGUEL J CORTEZ
CLERK

GABE KAIMOWITZ, Esquire, Qui Tam,

Plaintiff-Appellant,

USA, EX REL,,

Plaintiff,

versus

ORLANDO, FLORIDA, RICK BERNHARDT, ORLANDO NEIGHBORHOOD IMPROVEMENT CORPORATION ("ONIC"),

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

Before ANDERSON and BLACK, Circuit Judges, and CLARK, Senior Circuit Judge.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was taken under submission by the Court, upon the record and briefs on file, pursuant to Eleventh

Circuit Rule 34-3;
UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be and the same is hereby AFFIRMED,

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

Entered September 15, 1997
For the Court, Miguel J. Cortez, Clerk
By *Matt Davidson*
Deputy Clerk

ISSUED AS MANDATE: 12/19/97

UNPUBLISHED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED
96 JAN 30 A 10:36
CLERK,
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA,
ex rel. GABE KAIMOWITZ, Esq.,
Qui Tam,

Plaintiffs,

-vs- CASE NO. 95-204-Civ-ORL-19

ORLANDO, FLORIDA;. RICK BERNHARDT,
its planning and development director,
and the ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION,

Defendants.

ORDER

This cause before the Court on the following:...

(5) Motion by Qui Tam Plaintiff Pursuant to Rule 12(f), Fed. R. Civ. P. to Strike a Memorandum in Opposition to Qui Tam Plaintiff's Motion for Preliminary and Permanent Injunction Barring Removal from City Council Meeting (Doc. No. 228, filed January 10, 1996), Legal Authority in Support of (1) Motion by Qui Tam Plaintiff Pursuant to Rule 12 (f), Fed. R. Civ. P. to Strike a Memorandum in Opposition to Qui Tam Plaintiff's Motion for Preliminary and Permanent Injunction Barring Removal from City Council Meeting and (2) Motion to Compel by Plaintiff (Doc. No. 230, filed January 10, 1996), Defendant's Memorandum of Law in Opposition to Qui Tam Plaintiff's Motion to Strike Memorandum in Opposition to Motion for Preliminary and Permanent Injunction (Doc. No. 233, filed January 16, 1996), Defendants'

Notice of Filing Videotape of October 30, 1995 City Council Meeting (Doc. No. 234, filed January 16, 1996), Defendants' Notice of Filing Videotape of October 30, 1995 City Council Meeting (Doc. No. 234, filed January 16, 1996), and the videotape of the October 30, 1995 City Council Meeting.

Under Rule 12(f) of the Federal Rules of Civil Procedure, a motion to strike will be granted if a pleading contains any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Friedman v. So. Car. Ins. Co., 855 F. Supp. 348 (M.D. Fla. 1994). Motions to Strike are generally viewed with disfavor and are infrequently granted. Tingley Systems, Inc. v. Bay State HMO Management, Inc., 833 Supp. 882, 884 (M.D. Fla. 1993). The determination of whether a motion to strike should be granted is within this Court's discretion. Quality Inns Int'l Inc. v. Tampa Motel Assoc. Ltd., 157 F.R.D. 528, 531 (M.D. Fla. 1994).

After viewing the videotape of the October 30, 1995 Orlando City Council meeting, this Court finds that the statement of facts set out by the City of Orlando's attorney in the Memorandum in Opposition to qui tam Plaintiff's Motion for Preliminary and Permanent Injunction Barring Removal from City Council Meeting (Doc. No. 227) is not scandalous, impertinent, immaterial, or irrelevant with regard to qui tam Plaintiff's actions or statements made at the meeting. The fact that Defendant Orlando mis-cited one of qui tam Plaintiff's previous cases before this Court does not constitute sufficient reason to strike Orlando's response. Thus, qui tam Plaintiff's Motion to Strike (Doc. No. 228) is DENIED.

(6) Motion with Cited Legal Authorities to File a First Amended Complaint for Equitable Relief as Well as Such Other Recourse as is Permitted by the Federal False Claims Act; and Against Orlando, Fla., Also for Damages and Injunctive Relief Pursuant to 42 U.S.C. § 1983; and for Redress of Wrongs Done in Violation of Federal Freedom of Information Act and Florida Sunshine-in-Government

Provisions (Doc. No. 226) filed January 2, 1996, Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Leave to File First Amended Complaint (Doc. No. 231, filed January 12, 1996), and Amicus Curiae Brief in Limited Opposition to Relator's Motion for Leave to File Amended Complaint (Doc. No. 235, filed January 17, 1996).

....Qui tam Plaintiff also seeks to assert personal claims for alleged civil rights violations under 42 U.S.C. §§ 1983 and wrongful and improper withholding of public information. In this case, since a responsive pleading has already been served, qui tam Plaintiff may amend his Complaint "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Rule 15(a), Fed. R. Civ. P. The decision whether to grant a motion to amend is entrusted to the discretion of the trial court. Barrett v. Ind. Order of Foresters, 625 F.2d 73, 75 (5th Cir. 1980).[8]....

(Q)ui tam Plaintiff seeks to add personal claims of civil rights violations against Orlando under 42 U.S.C. §§ 1983 and 1985 and violations of the Freedom of Information Act and Florida Government in Sunshine Laws. It is not appropriate to join Plaintiff's personal actions against Defendants in the same qui tam action which is brought in the name of the United States. In this qui tam action, the United States is the real party in interest. United States ex rel. Milan, 961 F.2d 46 (sic). To allow qui tam Plaintiff to now sue Defendants in his personal capacity would only confuse and complicate the issues. If qui tam Plaintiff wants to pursue these personal actions, he must do so in a separately filed suit. Accordingly, Plaintiff's Motion to File a First Amended Qui Tam Complaint (Doc. No. 226) is **DENIED**. However, in accordance with Rule 15(d), Federal Rules of Civil Procedure, qui tam Plaintiff may supplement the

---

2--Pursuant to Bonner v. Prichard, 661 F.2d 1206, 1207 (11th Cir. 1981),Fifth Circuit decisions before October 1, 1981 bind Eleventh Circuit Courts.

original Complaint with transactions or occurrences or events which have occurred since the date of the original Complaint and which have a bearing on the instant claim.

(7) Motion by Qui Tam Plaintiff For Preliminary and Permanent Injunction to Bar Defendant City from Having Him Removed During City Council Meetings or Subjected to Arrest on the Basis of an Unconstitutional Ordinance (Doc. No. 223, filed December 27, 1995), Memorandum of Law in Support of Motion by Qui Tam Plaintiff for Preliminary and Permanent Injunction (Doc. No. 224, filed December 27, 1995), Affidavit by Qui Tam Plaintiff's Motion for Preliminary and Permanent Injunction Barring Removal form City Council Meeting (Doc. No. 227, filed January 2, 1996).

Plaintiff has filed a Motion for Preliminary Injunction which is not at all related to his Qui Tam Complaint.[9] Therefore, qui tam Plaintiff's Motion/Legal Authority for Court Pursuant to Local Rule 3.01(b) to Permit the Filing of this Restatement of Facts (Doc. No. 236) is **DENIED**.

CONCLUSION

Based on the foregoing,.....Motion by Qui Tam Plaintiff Pursuant to Rule 12(f) to Strike a Memorandum in Opposition to Qui Tam Plaintiff's Motion for Preliminary and Permanent Injunction Barring Removal from City Council Meeting (Doc. No. 228) is **DENIED**; Plaintiff's Motion with Cited Legal Authorities to File a First Amended Qui Tam Complaint (Doc. No. 226) is **DENIED**; Qui tam Plaintiff may supplement the original Complaint with transactions or occurrences or events which have occurred since the date of the original Complaint and which have a bearing on the instant claim; Motion by Qui Tam Plaintiff for Preliminary and Permanent Injunction to Bar Defendant City from Having Him Removed During City

---

3--Plaintiff filed the Motion for Preliminary Injunction before he filed the Motion for Leave to File a First Amended Qui Tam Complaint.

Council Meetings or Subjected to Arrest on the Basis of an unconstitutional Ordinance (Doc. No. 223) is **DENIED**; and Motion/Legal Authority for Court Pursuant to Local Rule 3.01(b) to Permit the Filing of this Restatement of Facts (Doc. No. 236) is **DENIED**.

DONE AND ORDERED at Orlando, Florida, this 29th day of January, 1996.

Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record
Gabe Kaimowitz

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

FILED
U.S. COURT OF APPEALS
NOV 20 1997
THOMAS K. KAHN
CLERK

No. 96-2307

GABE KAIMOWITZ, Esquire, Qui Tam,
Plaintiff-Appellant,

USA, ex rel.,
Plaintiff,

versus

ORLANDO, FLORIDA, RICK BERNHARDT, ORLANDO NEIGHBORHOOD IMPROVEMENT CORPORATION ("ONIC"),
Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

ON PETITION FOR REHEARING AND SUGGESTION OF REHEARING EN BANC
(Opinion_____, 11th Cir. 19, ___F.3d.___).

Before ANDERSON and BLACK, Circuit Judges, and CLARK, Senior Circuit Judge.

PER CURIAM:

No member of this panel nor other judge in regular active service on the Court having requested that the court be polled on Rehearing En Banc (Rule 35, Fed.R.App.P.; Eleventh Circuit Rule 35-5), the Suggestion of Rehearing En Banc is DENIED.

On panel rehearing, the last two sentences (including footnote 7) of the opinion are hereby deleted, and the following sentence is substituted in lieu thereof:

> For the reason discussed above, the record conclusively established that Kaimowitz was not entitled in this suit to the unrelated preliminary injunction he sought, and thus it was clear that an evidentiary hearing was not necessary.

The petition for panel rehearing is DENIED in all respects except for the foregoing amendment of the opinion.

THIS AMENDMENT HAS BEEN PUBLISHED:
KAIMOWITZ v. ORLANDO, 131 F.3d 950 (11th Cir. 1997).

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
50 Forsyth Street, N.W.
Atlanta, Georgia 30303

August 13, 1997

Miguel J. Cortez
Clerk

In Replying Give Number
Of Case and Names of Parties

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 97-2777 Kaimowitz v. Orlando, FL
DC. DKT NO.: 95-204-CV-ORL-19

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries....

Counsel participating in this appeal should complete and return the enclosed appearance form within fourteen (14) days. [11th Cir. R. 46-1]. Only counsel who enter an appearance will be noted on the docket. Persons appearing pro se need not file an appearance form.

Sincerely,
Miguel J. Cortez
MIGUEL J. CORTEZ, Clerk

Reply to: Deborah Owens (404) 331-3843

c: District Court Clerk

UNITED STATES CIRCUIT JUDGE
UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsythe Street, N.W.
Atlanta, Georgia 30303
Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

February 6, 1998

Richard D. Sletten
Clerk, U.S. District Court,
80 N. Hughey Ave., Floor 2, Suite 218
Orlando, FL 32801

Re: 97-2600 Noyes v. City of Orlando
DC DET NO.: 97-00254 CIV-ORL-22

The enclosed certified copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court.

Please acknowledge receipt by returning the enclosed copy of this letter.

Sincerely,
Thomas K. Kahn
THOMAS K. KAHN, Clerk
Reply To: Ola Solomon (404) 335-6178

THE ENCLOSED ORDER HAS BEEN ENTERED.

UNPUBLISHED

IN THE UNITED STATES COURT OF APPEALS

FILED
U.S. COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT FEB. 6 1998

THOMAS K. KAHN
CLERK

NO. 97-2600

HAL NOYES, Plaintiff-Appellant,

versus

CITY OF ORLANDO, a State of Florida municipality; DANIEL NESSIM, individually,

Defendants-Appellees,

GABE KAIMOWITZ,

Movant-Appellant.

On Appeal from the United States District Court
for the Middle District of Florida

ENTRY OF DISMISSAL

Pursuant to 11th Cir. R. 42-1 (b), this appeal is hereby dismissed for want of prosecution because appellant has failed to file an appellant's brief and record excerpts, within the time fixed by the rules, effective this 6th day of February 1998.

THOMAS K. KAHN
Clerk of the United States Court
of Appeals for the Eleventh Circuit

By: Ola Solomon
Deputy Clerk *Ola Solomon*
FOR THE COURT - BY DIRECTION

UNPUBLISHED
IN THE UNITED STATES COURT OF APPEALS

FILED
U.S. COURT OF APPEALS
FEB 6 1998
THOMAS K. KAHN
CLERK

FOR THE ELEVENTH CIRCUIT

NO. 97-2600

HAL NOYES, Plaintiff-Appellant,

versus

CITY OF ORLANDO, a State of Florida municipality; DANIEL NESSIM, individually,

Defendants-Appellees,

GABE KAIMOWITZ,

Movant-Appellant.

On Appeal from the United States District Court for the Middle District of Florida

ORDER:

Motion for Enlargement of Time to File Appellant's Brief and Record Excerpts to and including March 26, 1998 is ***DENIED.***

Ed Carnes
United States Circuit Court
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FILED *whp*?
97- MAY -2 PM 3:56
CLERK, UNITED STATES
DISTRICT COURT
ORLANDO, FLORIDA

HAL NOYES,
Plaintiff,

v.

CASE NO. 97-254-CIV-ORL-22

CITY OF ORLANDO, a state of
Florida Municipality; and
DANIEL NESSIM, individually,
Defendants.

MR. NOYES' VOLUNTARY NOTICE OF DISMISSAL WITH PREJUDICE

The Plaintiff, HAL NOYES, hereby files this his voluntary notice of dismissal with prejudice of all claims presented by him against the defendants, CITY OF ORLANDO and DANIEL NESSIM, in the above-captioned action. This dismissal is with prejudice and shall include the dismissal of Noyes' claims against the defendants for compensatory damages, punitive damages, costs and attorney's fees. Each party will bear its own costs and attorney's fees incurred in the handling of this legal matter. In filing this notice of dismissal with prejudice, Mr. Noyes reports to the court that the legal dispute between him and the defendants has been resolved.

Dated this *2nd* day of May, 1997.

LAW OFFICES OF
WILLIAM J. SHEAFFER STEVEN G. MASON
609 EAST CENTRAL BOULEVARD
ORLANDO, FLORIDA 32801
TELEPHONE (407) 423-1066 TELEPHONE (407) 649-1063
ATTORNEY FOR PLAINTIFF ATTORNEY FOR PLAINTIFF
By: *William J. Sheaffer* By: *Steven G. Mason*
Florida Bar #0257311 Florida Bar #842508

UNPUBLISHED

FINAL ORDER OF DISMISSAL WITH PREJUDICE

This cause coming before the court upon the above and foregoing voluntary notice of dismissal with prejudice and the court being duly advised in the premises, it is therefore

ORDERED AND ADJUDGED that this cause is dismissed with prejudice. All claims of Hal Noyes against the City of Orlando and Daniel Nessim for compensatory damages, punitive damages, attorneys' fees and costs are hereby dismissed. It is further ordered that each party shall bear its own costs and attorneys' fees incurred in connection with this matter.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida this 5th day of May, 1997.

Anne C. Conway
Federal Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States Mail this 6th day of May 1997 to: **STEVEN G. MASON** and **WILLIAM J. SHEAFFER**, Attorneys for the Plaintiff, 609 E. Central Blvd., Orlando, FL 32801; and to **MARK MUNSEY**, City of Orlando, 400 S. Orange Ave., Orlando, FL 32801.

WHPlaines (sp?)

UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FILED
97- APR 14 PM 2:58
CLERK, UNITED STATES
DISTRICT COURT
ORLANDO, FLORIDA

HAL NOYES,
Plaintiff

CASE NO. 97-254-CIV-ORL-22

v.

CITY OF ORLANDO, a state of
Florida Municipality; and
DANIEL NESSIM, individually,
Defendants.

ORDER

This cause comes before the Court on Gabe Kaimowitz's Motion to Intervene as a Plaintiff and Seek Certification of a Class Action (Dkt. 3) filed March 28, 1997. The Court notes the present Plaintiff objects to the Motion.

Based on the foregoing, it is ordered as follows:

1. The Motion to Intervene as a Plaintiff and Seek Certification of a Class Action (Dkt. 3) is DENIED.

2. The Claim filed by Mr. Kaimowitz (Dkt. 4) is hereby STRICKEN and the Clerk is directed to return the document to Mr. Kaimowitz.

DONE AND ORDERED in Chambers, Orlando, Florida, this 14th day of April, 1997.

Anne C. Conway
ANNE C. CONWAY
United States District Judge

Copies to: Counsel of Record
Unrepresented Party, Gabe Kaimowitz

UNPUBLISHED

IN THE UNITED STATES COURT OF APPEALS

FILED
U.S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT OCT 10 1997
MIGUEL J. CORTEZ
CLERK

NO. 97-2458

IN RE:

GABE KAIMOWITZ

Petitioner,

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida[1]

Before: Anderson and Carnes, Circuit Judges.

BY THE COURT:

Petitioner's application for writ of mandamus is DISMISSED because the petition for writ of mandamus is moot.

1--Petitioner's note. This petition was filed on Apr. 21, 1997, Re: 97-2600 Noyes v. City of Orlando DC DKT NO.: 97-00254 CIV-ORL-22

UNPUBLISHED

IN THE UNITED STATES COURT OF APPEALS

FILED
U.S. COURT OF APPEALS
MAR2 1998
THOMAS K. KAHN
CLERK

FOR THE ELEVENTH CIRCUIT

NO. 97-2600

HAL NOYES,

Plaintiff-Appellant,

versus

CITY OF ORLANDO, a State of Florida municipality; DANIEL NESSIM, individually,

Defendants-Appellees,

GABE KAIMOWITZ,

Movant-Appellant.

On Appeal from the United States District Court for the Middle District of Florida

ORDER:

Motion for Rehearing for Appellant (construed as Motion to Reinstate the Appeal) is ***DENIED***.

Motion to File Appellant's Brief and Record Excerpts Out of Time is ***DENIED***.[1]

Ed Carnes
UNITED STATES CIRCUIT JUDGE

1--Petitioner's Note: All seven copies of the Initial Brief and five of the Record Excerpts submitted with the motion filed on Feb. 13 were returned without explanation.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsythe Street, N.W.
Atlanta, Georgia 30303

Miguel J. Cortez
Clerk

In Reply Give Number
Of Case And Names of Parties

October 7, 1997

MEMORANDUM TO COUNSEL OR PARTIES:

Re: 97-2600 Noyes v. City of Orlando
DC DET NO.: 97-00254 CIV-ORL-22

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries....

Counsel participating in this appeal should complete and return the enclosed appearance form within fourteen (14) days. [11th Cir. R. 46-1]. Only counsel who enter an appearance will be noted on the docket. Persons appearing pro se need not file an appearance form.

Sincerely,
Miguel J. Cortez
MIGUEL J. CORTEZ, Clerk

Reply To: Vicki Berrong (404) 331-3833

c: District Court Clerk

UNPUBLISHED

IN THE UNITED STATES COURT OF APPEALS

FILED
U.S. COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT DEC 02 1997
THOMAS K. KAHN
CLERK

NO. 97-2600

HAL NOYES, Plaintiff-Appellant,

versus

CITY OF ORLANDO, a State of Florida municipality; DANIEL NESSIM, individually,

Defendants-Appellees,

GABE KAIMOWITZ,

Movant-Appellant.

On Appeal from the United States
District Court for the Middle District of Florida

O R D E R:

Appellant's "motion for written notification..."[2] is DENIED.

s/ Joel F. Dubina
UNITED STATES CIRCUIT JUDGE

1--Petitioner's note: Petitioner sought to have someone notified for the other parties to the controversy below. When this motion was denied, Petitioner on Dec. 5, 1997, sent a Motion for Summary Reversal and Remand to an Unbiased Judge for Consideration of Claims for Injunctive and Declaratory Relief on Behalf of a Class, because no one would be appearing in opposition to his appeal. To Petitioner's knowledge, that Motion was never resolved, although he premised a timely later request for an enlargement of time for the filing of the initial brief and record excerpts for up to 60 days or a reasonable time after that motion was resolved.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsythe Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

In Replying Give Number
Of Case And Names of Parties

December 18, 1997

MEMORANDUM TO COUNSEL OR PARTIES:

Re: 97-2600 Noyes v. City of Orlando
DC DET NO.: 97-00254 CIV-ORL-22

Pursuant to Fed.R.App.P. 12(c), be advised that the record is complete for purposes of appeal. APPELLANT'S BRIEF AND RECORD EXCERPTS ARE DUE WITHIN FORTY (40) DAYS FROM THIS DATE. This is the only notice you will receive concerning the due date for filing briefs....

Sincerely,
Thomas K. Kahn
THOMAS K. KAHN, Clerk

Reply To: Ola Solomon (404) 335-6178

Encl.

BR-2 (10/97)

UNPUBLISHED
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

FILED
95 FEB 27 PM
CLERK,
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA,
ex rel. GABE KAIMOWITZ, esq.,
Qui Tam,
Plaintiffs,

-vs- CASE NO. 94-284-Civ-J-10

ORLANDO, Fla., RICK BERNHARDT,
its planning and development director,
and the ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION,
Defendants.
_____/

ORDER

Defendants City of Orlando and Richard Bernhardt filed a motion for change of venue (Doc. 26) and the remaining Defendant, Orlando Neighborhood Improvement Corporation, filed its own separate motion for change of venue (Doc. 28). Plaintiff responded to both motions (Docs. 29, 30, & 31), and filed a notice of filing (Doc. 34) and an affidavit (Doc. 33) related to the venue issue. Defendants have moved (Docs. 35 & 37) to strike the Plaintiff's notice of filing and affidavit.

Plaintiff's qui tam complaint seeks equitable relief and damages allowed by the False Claims Act. The complaint alleges that the Defendants "have made claims violative of federal law to induce Community Development Bloc Grant ("CDBG") funds and other grants and loans from the U.S.

Department of Housing and Urban Development ("HUD"), and the complaint also seeks "injunctive relief to bar use of such funds for maintenance and expansion of a commercial district, low-income public housing, and alleged rehabilitation of multi-family low-income rental units in virtually all black neighborhoods of Orlando."

Defendants seek a change of venue under 28 U.S.C. § 1404 arguing that Orlando is the better venue because Defendants are located in Orlando and transact the majority of their business there, and because all of the recipients of the allegedly falsely claimed funds are also located in Orlando. Plaintiff opposes a change of venue in this case for three principal reasons. First, Plaintiff contends that all of the documents related to the alleged false claims are located in Jacksonville because the Defendants made all of these claims to the Jacksonville office of the United Stats Department of Housing and Urban Development ("HUD") which processed the claims in and dispersed the funds from Jacksonville. Second, Plaintiff contends that the Judges and jurors residing in Orlando will be biased because this case includes claims against the City of Orlando. Third, Plaintiff argues that in Orlando "an all or assuredly predominantly white jury.. .would resolve to keep the local black population in its place."

Under 31 U.S.C. § 3732, venue in a case under the false claims act is proper:

> in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred.

Under this section, venue is proper in either Jacksonville or Orlando.

Under 28 U.S.C. § 1404, the Court can transfer venue to any other district or division where the action might have been brought if a transfer would serve the convenience of the parties and witnesses and the interests of justice. Ordinarily,

a plaintiff's choice of forum is entitled to considerable weight when a Court (sic) whether to order a change of venue. However, in a false claims act case, a qui tam plaintiff's choice of forum, it is apparent that venue is more appropriate in the Orlando division. All of the Defendants, as well as the officers and employees of the Defendants, reside in Orlando. Moreover, the recipients of the funds acquired through the allegedly false claims, who can be expected to be witnesses in this action, all reside and conduct business in Orlando. Although some documentary evidence is located in Jacksonville's HUD office, all of the Defendants' documents and all of the documents of the recipients of the HUD funds are located in Orlando. Finally, Plaintiff is a Gainesville resident, and therefore, will not be significantly inconvenienced if forced to litigate this matter in Orlando rather than Jacksonville. For all of these reasons, the Court finds that a transfer to the Orlando division would serve the convenience of the parties and witnesses and the interest of justice.

Accordingly, upon due consideration:

(1) The Defendants' motion to transfer venue (Docs. 26 & 28) are GRANTED and the clerk is directed to transfer this case to the Orlando division; and

(2) Defendants' motions to strike (Docs. 35 & 37) are DENIED.

IT IS SO ORDERED.

DONE AND ORDERED at Jacksonville, Florida this *27th* day of February, 1995.

W Terrell Hodges

UNITED STATES DISTRICT JUDGE

Copy to counsel of record

UNPUBLISHED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED
95 MAR 16
CLERK,
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA,
ex rel. GABE KAIMOWITZ, esq.,
Qui Tam,

Plaintiffs,

-vs-

CASE NO. 95-204-Civ-ORL-19

ORLANDO, Fla., RICK BERNHARDT,
its planning and development director,
and the ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION, ("ONIC")

Defendants.

ORDER

This case comes before the Court upon Plaintiff UNITED STATES OF AMERICA, ex rel GABE KAIMOWITZ'S Motion for Recusal of Judges and Senior Magistrate in Orlando Should Venue Change be Ordered (Doc. No. 51, filed March 6, 1995).

BACKGROUND

On March 25, 1994, Plaintiff filed a Qui Tam action arising under the False Claims Act, 31 U.S.C.§ 3729-3733. Plaintiff alleges that the City of Orlando, its planning and development director, and the Orlando Neighborhood Improvement Corporation have made false claims in order to procure Community Bloc Grant Development (sic) funds and other grants and loans from the U.S. Department of Housing and Urban Development ("HUD").

The instant action was originally filed in the Jacksonville Division of the U.S. District Court, Middle District of Florida. It was transferred to the Orlando Division on February 27, 1995, and was assigned to the undersigned judge. Plaintiff now seeks recusal of all the Orlando judges pursuant to 28 U.S.C. § 144.

CONCLUSIONS OF LAW

Section 144 of 28 U.S.C. states:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of an adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

In the instant case, Plaintiff has filed a fifteen page affidavit accompanied by numerous exhibits. The affidavit presents the facts upon which Plaintiff bases his belief that all of the judges in the Orlando Division are biased against him and against racial minorities; however, the Court will deal only with those facts that relate to the undersigned judge.

Plaintiff's complaints against the undersigned are presented on pages 7-9 of his affidavit. Although the affidavit is less than a model of clarity, Plaintiff appears to base his

belief that the undersigned judge is biased against him primarily on her rulings in previous cases. Plaintiff objects to the undersigned's refusal to recuse herself in three previous cases, Macon v. City of Orlando, 89-327-CIV-ORL-19; Harmon v. Orlando, 89-424-CIV-ORL-19; and Webster v. Frank, 90-624-CIV-ORL-19. The undersigned did not try any of those cases. Macon and Harmon were assigned to visiting judges and Webster settled. However, the undersigned did grant a post-trial motion for sanctions in the amount of $568 against Plaintiff in the Harmon case. Plaintiff also points to the fact that the undersigned awarded costs against Plaintiff in Walker v. Frito-Lay, Inc., 89-522-CIV-ORL-19 as evidence of bias.

The Court finds that Plaintiff's affidavit is legally insufficient to support a motion for recusal based on the undersigned's previous rulings. To be legally sufficient under §. 144, a motion for recusal "must allege personal bias or prejudice caused by an extrajudicial source other than what the judge has learned or experienced from his participation in the case." Sine v. Local No. 992 Int'l Brotherhood of Teamsters, 882 F.2d 913, 915 (4th Cir. 1989). The Courts have repeatedly held that a motion for recusal may not normally be based on a judge's ruling in the same or another case. Liteky v. United States, 114 S.Ct. 1147, 1157 (1994)(Judicial rulings alone almost never constitute valid basis for a bias motion); United States v. MMR Corp., 954 F.2d 1040 (5th Cir. 1992)(Adverse rulings in a case are not adequate basis for demanding recusal); McWhorter v. City of Birmingham, 904 F.2d 674 (11th Cir. 1990)(Ordinarily, judge's ruling in same or related case may not serve as a basis for recusal). Therefore, Plaintiff's allegations relating to the undersigned rulings in prior cases are legally insufficient to support a claim under § 144.

In addition to complaints about the undersigned's rulings in prior cases, Plaintiff alleges that the undersigned is racially biased. Plaintiff made virtually the same allegations

in a motion to disqualify the undersigned in the Webster case. In its opinion denying Plaintiff's motion, the Court stated:

> Plaintiff's allegations that this Judge is biased against blakcs (sic) as a group are speculative and inconclusive. The allegations are based on statements of others which imply discriminatory practices on the part of the OrangCounty Bar Association, the Florida Bar, and judges on the federal bench.' Although this judge has been associated with each of these groups or organizations, the allegations do not specify any discriminatory conduct on her part. Disqualification is not warranted by rumors or opinions, nor by speculative assertions that require a series of inferential leaps in order to arrive at a conclusion that a judge is biased. See United States v. Haldeman, 559 F.2d 31, 134 (sic) (D.C. Cir. 1976).
>
> Since Plaintiff has still not specified any discriminatory conduct on the undersigned's part, but has simply recycled stale speculation, the Court finds that Plaintiff's allegations are not legally sufficient to support a motion for recusal under § 144. Accordingly, Plaintiff's Motion for Recusal (Doc. No. 51) is DENIED.

DONE AND ORDERED at Orlando, Florida, this *15th* day of March 1995.

Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record.

COPIES MAILED
ON 3-15 1995
By DJD
Deputy Clerk

UNPUBLISHED
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED
95 MAR 17 AM 11:01
CLERK,
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA,
ex rel. GABE KAIMOWITZ, esq.,
Qui Tam,

Plaintiffs,

-vs- CASE NO. 95-204-Civ-ORL-19

ORLANDO, Fla., RICK BERNHARDT,
its planning and development director,
and the ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION, ("ONIC")

Defendants

ORDER

This case comes before the Court upon the following matters: (1) Plaintiff UNITED STATES OF AMERICA, ex rel GABE KAIMOWITZ' Motion for Reconsideration of an Order of February 27, 1995, Granting Change of Venue (Doc. No. 50, filed March 6, 1995)....

(4) Plaintiff's Motion for Preliminary Injunction (Doc. No. 57, filed March 13, 1995); Defendants' Memorandum of Law in Opposition to Qui Tam Plaintiff's Motion for Preliminary Injunction (Doc. No. 70, filed March 16, 1995).

I. Motion for Reconsideration of Change of Venue

The instant action was originally filed in the Jacksonville Division of the U.S. District Court, Middle District of Florida. Defendants sought a change of venue pursuant to 29 U.S.C. § 1404 arguing that Orlando was the better venue because Defendants are located in Orlando and transact the majority of their business there and because all of

the recipients of the allegedly falsely acquired government funds are also located there. Plaintiff objected to the change of venue on the grounds that all of the documents related to the allegedly falsely acquired funds are located in Jacksonville, that the judges and jurors living in Orlando would be biased because the action is against the city, and that "an all or assuredly predominantly white jury would resolve...to keep the local black population in its place."

The district court in Jacksonville considered Plaintiff's arguments but nevertheless determined that Orlando was the appropriate venue.[3] After reviewing the original pleadings submitted by both parties as well as the pleadings and materials submitted by Plaintiff in his motion for reconsideration, this Court finds that Orlando is the better venue for the instant action.

Accordingly, Plaintiff's Motion for Reconsideration of an Order of February 27, 1995, Granting Change of Venue (Doc. No. 50) is **DENIED**....

IV. Motion for Preliminary Injunction

Plaintiff seeks to enjoin Defendants from filing any papers with the Orlando Court until rulings have been entered on Plaintiff's Motions for Reconsideration of the Transfer of Venue and for Recusal of the Orlando judges. The Court has denied both those motions.

Accordingly, Plaintiff's Motion for Preliminary Injunction (Doc. No. 57) is DENIED AS MOOT.

DONE AND ORDERED at Orlando, Florida, this 16th day March, 1995. *Patricia C. Fawsett*

PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

1--Although the Order transferring this case to Orlando was entered by Judge Terrell Hodges of the Jacksonville Division, since the case has been assigned to the undersigned judge for all purposes, she will rule on the Motion for Reconsideration.

UNPUBLISHED
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED
95 JUNE 15 PM 4:06
CLERK,
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA,
ex rel. GABE KAIMOWITZ, esq.,
Qui Tam,

Plaintiffs,

-vs- CASE NO. 95-204-Civ-ORL-19

ORLANDO, Fla., RICK BERNHARDT,
its planning and development director,
and the ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION, ("ONIC")

Defendants

ORDER

This case comes before the Court on the following matters: ....(5) Qui Tam Plaintiff's Motion for Rule 11 Sanctions Against Defendants' counsel (Doc. No. 115, filed April 13, 1995); Defendant ORLANDO, FLORIDA'S Response to Qui Tam Plaintiff's Motion for Sanctions Against Defendants' Counsel {Doc. No. 128, filed April 19, 1995); and Defendant ORLANDO NEIGHOBRHOOD'S Response to Motion for Rule 11 Sanctions Against Defendants' Counsel (Doc. No. 129, filed April 24, 1995).

Qui Tam Plaintiff seeks sanctions against counsel for Defendants for actions Plaintiff alleges that they took to prevent further consideration of any matters in the instant case by the Jacksonville Division of this Court prior to its reassignment to the Orlando Division.

It appears that to the Court that there was some genuine confusion attendant to the instant csae's transfer to the Orlando Division, and that there wsa some delay in filing required papers due to the uncertainty as to when the case was actually transferred. However, the Court finds that any delays were inadvertent and thus sanctions are not appropriate.

Accordingly, Qui Tam Plaintiff's Motion for Rule 11 Sanctions (Doc. No. 115) is DENIED.

DONE AND ORDERED at Orlando, Florida this *15th* day June, 1995.

Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record.

UNPUBLISHED

UNITED STATES DISTRICT COURT FILED
MIDDLE DISTRICT OF FLORIDA 96 AUG 23 AM 10:36
ORLANDO DIVISION CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA,
ex rel. GABE KAIMOWITZ, Esq.,
Qui Tam,

Plaintiff

v. CASE NO. 95-204-CIV-ORL-19

ORLANDO, FLORIDA; RICK
BERNHARDT, its planning
and development director,
and ORLANDO NEIGHBORHOOD
IMPROVEMENT CORPORATION,

Defendants.

ORDER

This cause came before the Court on the following:....

(3) Renewed Motion for Recusal of the Honorable Patricia C. Fawsett in Light of Materials Which Have Surfaced During Discovery (Doc. No. 242, filed February 5, 1996), and Legal Authority in Support of Renewed Motion for Recusal... (Doc. No. 243, filed February 5, 1996). Defendants did not respond.

Qui tam Plaintiff has continually asserted that the undersigned is racially biased and biased against qui tam Plaintiff personally. For the second time in this case qui tam Plaintiff seeks to have the undersigned recuse herself from this action. Title 28 U.S.C. § 144 states:

Whenever a party to any proceeding in a district court

> makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has personal bias or prejudice either against him or in favor of an adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reaesons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Qui tam Plaintiff failed to file an affidavit in support of his motion as required by the statute. Further, as stated above, qui tam Plaintiff has already filed a motion for recusal in this case and an affidavit in support thereof, which was denied by this Court as insufficient. (Doc. No. 71). Under the statute, qui tam Plaintiff is not permitted to file another affidavit. Therefore, qui tam Plaintiff's motion for recusal under 28 U.S.C. § 144 is legally insufficient.[1]

Qui tam Plaintiff also argues that the undersigned must be recused under 28 U.S.C. §455(b)(1) and claims the undersigned has knowledge of the following evidentiary facts which allegedly concern the instant proceedings: (a) transactions between Cross Roads Mission and the City; (b) the credibility of her colleague A. Henry Hoche, white property owner in black Parramore; and(c) the interaction

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1--Petitioner's note: This attorney did not seek relief under this provision because he was aware that he could only file one affidavit for recusal in this action.

between Orlando and the OHA[2] which has its own related history of racial discrimination documented by HUD to 1993. (Doc. No. 243, pg. 7).

Qui tam Plaintiff argues that Henry Hoche, with whom the undersigned served on the OHA Board, and Mavis Starke, who was previously a party to an action before the undersigned, will be witnesses in this case. The fact that the undersigned has had previous interaction with two of the expected witnesses in this case does not mandate the undersigned's recusal. Further, it is questionable what relevance the OHA has to the instant matter. Thus, the Court does not find that qui tam Plaintiff has produced sufficient evidence to require a change in result form qui tam Plaintiff's previous motion for recusal or that recusal is necessary under 28 U.S.C. § 455. Thus, qui tam Plaintiff's Motion for Recusal...(Doc. No. 242) is DENIED....

CONCLUSION

Based on the foregoing...Qui Tam Plaintiff's Renewed Motion for Disqualification....(Doc. No. 241) is DENIED. Qui tam Plaintiff's Motion for Recusal (Doc. No. 242) is DENIED. ....DONE AND ORDERED at Orlando, Florida this 21st day August, 1996.

Patricia C. Fawsett
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All counsel of Record, Gabe Kaimowitz

2--Petitioner's Note: The Orlando Housing Authority. Judge Fawsett served with Mr. Hoche on the OHA five-member board during and immediately before the U.S. Department of Housing and Urban Development ("HUD") Board reported that the public housing agency was discriminating racially by maintaining separate waiting lists for blacks and whites depending on the neighborhood in which the housing was located. Judge Fawsett continued to list her service upon appointment by the Orlando Mayor in her biographical sketch in *Who's Who in America*.

EXCERPTS FROM AN ORLANDO POLICE DEPARTMENT ARREST REPORT SUBMITTED BY PLAINTIFF WITH HIS AFFIDAVIT IN SUPPORT OF PRELIMINARY RELIEF

ORLANDO POLICE DEPARTMENT

Information Report — Case No. 95-334136

Primary Victim: NONE — Dispatch Incident Type: SUSPCS PER

Unit No. : C83

Date/Time Reported: 10/30/95 15:28 Hrs.

Date: Time Occurred: 10/30/95 15:15 Hrs....

Case Narrative

On 10/30/95 at 1400 hours, I, Officer Bradley, was assigned as Sergeant at Arms for the Orlando City Council meeting. Mr. Gabe Kaimowitz was called upon by Mayor Hood to speak on a matter which he filed with the City Clerk. Mr. Kaimowitz told Mayor Hood that he preferred to speak last. Mayor Hood insisted he speak immediately and a short verbal exchange took place between them....

MR. Kaimowitz was placed under arrest at 1518 hours. At 1530 hours, Joe Mittiga came out to the parking lot and informed me that Mayor Hood would prefer that Mr. Kaimowitz not be arrested and taken to jail.

I contacted the Watch Commander, Lieutenant Johnny Redgrave, who responded and authorized the release of Mr. Kaimowitz. This is an information report. No arrest charges have been filed at this time.

JR/7727/103195/0945 hours/n

PRINCIPALS

Informatnl: KAIMOWITZ, GABE, H.Phone: 904-375-2670

No. 1 PO BOX 140119

GAINESVILLE, FL 32614

Race; White Sex: Male D.O.B. 5/05/35 Age: 60

DOCKET ENTRY EXCERPTS FROM THE DISTRICT COURT IN THE QUI TAM ACTION STARTED IN JACKSONVILLE TO INDICATE THAT THE LOWER COURT HAD RULED IN PERTINENT PART ON THE MERITS WHEN THE APPEALS COURT OPINED ON SEPT. 15, 1997, THAT THE LOWER COURT HAD NOT ACTED ON THE QUI TAM CLAIM, AND FURTHER THAT THE ACTION WAS STARTED UNDER A DIFFERENT NUMBER IN THE JACKSONVILLE DIVISION OF THE U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA. OTHER NOTED ENTRIES ALSO PROVIDE TIME SEQUENCE AND CONTEXT FOR THIS PETITION.

MOTREF APPEAL
DAB

U.S. District Court
Middle District of Florida (Orlando)

CIVIL DOCKET FOR CASE #: 95-CV-204

Kaimowitz et al. v. Orlando, Fla., et al. Filed: 03/25/94
Assigned to Judge Patricia C. Fawsett Nature of Suit: 890
Lead Docket: None
Dkt. # in other court: None

Cause: 32:3729 False Claims Act.

GABE KAIMOWITZ, Esquire,
Qui Tam
plaintiff

Gabe H. Kaimowitz
[COR LD NTC]
Law Office of Gabe Kaimowitz,
P.O. Box 140119
Gainesville, FL 32614
904/334-4718

USA, ex rel

.Karen L. Gable
[COR LD NTC]
U.S. Attorney's Office
Middle District of Florida 201 U.S. Courthouse
80 N. Hughey Ave.
Orlando, FL 32801
USA
407/648-7500

Michael F. Hertz
[COR LD NTC]
Stephen J. Gripkey
[COR LD NTC]
U.S. Dept. of Justice
Civil Division
P.O. Box 261
Ben Franklin Station
Washington, DC 20044
USA
202/307-0497

v.

ORLANDO, FL

Scott A. Glass
{COR LD NTC}

Docket as of August 26, 1997 4:08 pm

I certify the foregoing to be a true and correct copy of the original, RICHARD D. SLETTEN, Clerk
United States District Court
Middle District of Florida
by *R.A.*
Deputy Clerk

Proceedings include all events MOTREF
6:95cv204 Kaimowitz, et al. v. Orlando, Fla. et al.

APPEAL

DAB

3/24/94 1 QUI TAM COMPLAINT for equitable relief as well as damages, costs, etc., allowed by the False Claims Act filed (jef)

3/25/94 -- MAGISTRATE JUDGE CASE ASSIGNMENT to Magis. Judge John E. Steele ....

1/17/95 21 RETURN OF SERVICE executed as to Orlando Neighborhood 1/9/95 Answer due on 1/30/95 for Orlando Neighborhood (mfk)

Docket as of August 26, 1997 4:08 pm Page 4

1/17/95 22 RETURN OF SERVICE executed as to Rick Bernhardt 1/9/95 Answer due on 1/30/95 for Rick Bernhardt (mfk)

1/17/95 23 RETURN OF SERVICE executed as to Orlando, FL 1/9/95 Answer due on 1/30/95 for Orlando, FL (mfk)....

Docket as of August 26, 1997, 4:08 pm Page 5

....

2/22/95 46 MOTION by Gabe Kaimowitz with memorandum in support to resolve two discovery matters requiring immediate attention referred to Magis. Judge John E. Steele (mfk)....

2/27/95 47 ORDER granting [26-1] motion to change venue; granting [28-1] motion to change venue; transferring case to the Orlando Division; denying [35-1] motion to strike [34-1] notice; denying [37-1] to strike [33-1] affidavit (Signed by Judge Wm. T. Hodges) ctc (slc)

2/27/95 -- Intradistrict transfer to Orlando to Division (Their Case No.: 95-204-Civ-ORL-19 (slc)....

3/6/95 50 MOTION by Gabe Kaimowitz for reconsideration of [47-1] order transferring case

to the Orlando Division (mfk) [Entry date 03/08/95]

3/6/95 51 MOTION by Gabe Kaimowitz for recusal of judges and senior magistrate in Orlando should venue be changed as ordered (mfk) [Entry date 03/08/95]....

3/9/95 -- Original file and docket sheet received from Jacksonville Division . (Case No. 94-284-CIV -J-10 (djd) Entry date 03/10/95]

Docket as of August 26, 1997 4:08 p.m. Page 7

3/10/95 -- Motion(s) referred: [51-1] motion for recusal of judges and senior magistrate in Orlando should venue be changed, as ordered referred to Judge Patricia C. Fawsett, [48-1]....

3/10/95 -- Motion(s) no longer referred: [51-1] motion for recusal of judges and senior magistrate in Orlando should venue be changed as ordered....

3/16/95 71 ORDER denying plaintiff's [51-1] motion for recusal of judges and senior magistrate in Orlando should venue be changed as ordered (Signed by Judge Patricia C. Fawsett)....

Docket as of August 26, 1997 4:08 pm Page 9

12/27/95 223 MOTION by qui tam plaintiff Gabe Kaimowitz for preliminary injunction, and for permanent injunction to bar defendant City from having him removed during City Council meetings or subjected to arrest on the basis of an unconstitutional ordinance. Appendix attached. (djd) [Entry date 12/28/95]

Docket as of August 26, 1997 4:08 pm Page 26

1/2/96 226 MOTION by qui tam plaintiff Gabe Kaimowitz to file a first amended [1-1] qui tam complaint for equitable relief as well as such other recourse as is permitted by the Federal False Claims Act....

1/4/96 227 MEMORANDUM by defendants Orlando, FL, Rick Bernhardt in opposition to [223-1] motion for preliminary and permanent injunction barring removal from City Council meeting....

1/10/96 228 MOTION by qui tam plaintiff Gabe Kaimowitz to strike [227-1] opposition memorandum to motion for preliminary and permanent injunction barring removal from City Council meeting....

1/16/96 234 NOTICE of filing videotape of October 30, 1995 City Council meeting in support of their memorandum in opposition to motion for preliminary and permanent injunction and motion to strike defendants' memorandum in opposition by defendants Orlando, FL, Rick Bernhardt. Videotape filed separately. [djd]....

1/30/96 238 ORDER...Denying plaintiff's [228-1] motion to strike [227-1] opposition memorandum to motion for preliminary and permanent injunction barring removal from City Council meeting. Denying plaintiff's [226-1] motion to file a first amended [1-1] qui (sic) complaint for equitable recourse as well as such other recourse as is permitted by the Federal False Claims Act....Denying plaintiff's [223-1] motion for preliminary injunction, denying [223-2] motion for permanent injunction to bar defendant City from having him removed during City Council meetings or subjected to arrest on the basis of an unconstitutional ordinance....

(Signed by Judge Patricia C. Fawsett) ctc (djd)....

2/5/96 242 RENEWED MOTION by qui tam plaintiff for recusal of the Hon. Patricia C. Fawsett in light of materials which have surfaced during discovery (djd)....

Docket as of August 26, 1997 4:08 pm Page 29

2/27/96 259 NOTICE OF INTERLOCUTORY APPEAL of [238-1] order by qui tam plaintiff Gabe Kaimowitz....

Docket as of August 26, 1997 4:08 pm Page 31

3/15/96 -- NOTICE assigning 11th Circuit case number 43: [260-1] USCA NUMBER: 96-2307 (djd)

Docket as of August 26, 1997 4:08 pm Page 32

8/23/96 342 ORDER...Denying plaintiff's [242-1] motion for recusal of the Hon. Patricia C. Fawsett in light of materials which have surfaced during discovery....(Signed by Judge Patricia C. Fawsett on 8/21/96 0 ctc (djd)

8/23/96 343 CASE MANAGEMENT AND SCHEDULING ORDER....Jury trial set for 12/2/96 Scheduled for Judge Patricia C. Fawsett (signed by Judge Patricia C. Fawsett) ctc (djd)

Docket as of August 26, 1997 4:08 pm Page 40

10/28/96 -- Transmitted record on appeal to USCA [260-1] appeal (Transmittal includes: 12 Vol. Pleadings;) (rdo)

Docket as of August 26, 1997 4:08 pm Page 43

11/20/96 -- **SET INTERLOCUTORY APPEAL flag. (djd)

11/21/96 -- Record on appeal returned from USCA: (13 Vol. Pleadings, 1 Vol. Exhibits)(rdo)

Docket as of August 26, 1997 4:08 pm Page 48

11/26/96 442 ORDER denying [390-1] motion for a Judge outside the Orlando Division to hear this proceeding; granting [367-1] motion for summary judgment in its favor; and, granting [356-1] motion for summary judgment; based

on this Order, it is unnecessary for this Court to consider qui tam Plaintiff's six Motions for Pretrial Summary Judgment or any other motions pending in this case; the Clerk is ordered to enter judgment in favor of Defendants on all claims and to close this case (Signed by Judge Patricia C. Fawsett 11/25/96) ctc MFR Number 92/04 (gjs).

11/26/96 443 JUDGMENT for Orlando, FL, Rick Bernhardt and Orlando Neighborhood against Gabe Kaimowitz, USA; it is ordered and adjudged that the Qui Tam Plaintiff take nothing, that the action be dismissed on the merits, and that the Defendants, Orlando, FL, Rick Bernhardt and the Orlando Neighborhood Improvement Corporation, recover of the Plaintiff their costs of action; Civil Appeals Checklist Mailed (entered by G. Schafer) MFR Number 92/0460 (gjs)

11/26/96 -- CASE CLOSED. (gjs)

12/6/96 444 MOTION by qui tam plaintiff Gabe Kaimowitz of [443-1] judgment order....

2/14/97 478 ORDER denying [444-1] motion for reconsideration of [443-1] judgment order....(Signed by Judge Patricia C. Fawsett) (rdo) Entry date 02/18/97

3/13/97 493 NOTICE OF APPEAL of [478-1] order by Gabe Kaimowitz.....

DOCKET ENTRY EXCERPTS FROM THE DISTRICT COURT IN THE ACTION BY PETITIONER TO INTERVENE IN NOYES v. CITY OF ORLANDO, ET AL., TO SHOW ESPECIALLY LACK OF PARTICIPATION BY DEFENDANTS AND STRIKING OF DOCUMENTS

APPEAL JGG

U.S. District Court
Middle District of Florida (Orlando)

CIVIL DOCKET FOR CASE #: 97-CV-254

Kaimowitz et al. v. Orlando, Fla., et al. Filed: 03/17/97
Assigned to Judge Patricia C. Fawsett Jury Demand: Plaintiff
Lead Docket: None Jurisdiction: Federal Question
Dkt. # in other court: None
Cause: 42:1983 Civil Rights Act

HAL NOYES,
plaintiff

William J. Sheaffer
[COR LD NTC]
William J. Sheaffer, P.A.
609 E. Central Blvd.
Orlando, FL 32801
USA
407/423-1066
Steven Gerald Mason
[COR LD NTC]
Law Office of Steven Mason
609 E. Central Blvd.
Orlando, FL 32801
407/649-1063

v.

CITY OF ORLANDO, a State of Florida municipality,
defendant

DANIEL NESSIM, individually,
defendant

GABE KAIMOWITZ
movant

Gabe Kaimowitz
[COR LD NTC] [PRO SE]
Law Office of Gabe Kaimowitz
P.O. Box 140119
Gainesville, FL 32614
(904) 334-4718

I certify the foregoing to be a true and correct copy of the original.
RICHARD D. SLETTEN, Clerk United States District Court,
Middle District of Florida Docket as of October 10, 1997 3:33 pm
By: *R.CL*
Deputy Clerk

Proceedings include all events

6:97CV254 Noyes v. City of Orlando, et al APPEAL

JGG *Beg Vol 1*

3/17/97	1	COMPLAINT filed. Action alleging violation of civil rights. (Jury Demand) (nbl).
3/17/97	--	FILING FEE PAID. Filing Fee $ 150.00 Receipt #64699 (nbl)
3/17/97	--	MAGISTRATE JUDGE CASE ASSIGNMENT. Magistrate assigned: James G. Glazebrook (nbl)
3/17/97	2	CERTIFICATE OF COMPLIANCE by Hal Noyes with Local Rule 1.04(c). No related cases. (nbl)
3/17/97	--	SUMMON(ES) issued for City Orlando, Daniel Nessim. Consent(s) issued. (nbl)
3/28/97	3	MOTION to intervene as a plaintiff by Gabe Kaimowitz re: [3-1] and seek certification of a class action. (maa)
3/28/97	3	...and REQUEST for oral argument by Gabe Kaimowitz re: [3-1] motion to intervene as a plaintiff by Gabe Kaimowitz [3-2]....

3/28/97	4	CLAIM of party seeking to intervene as a plaintiff and pursue certification of class action by Gabe Kaimowitz (in support of [3-1] motion to intervene as a plaintiff by Gabe Kaimowitz, [3-2] motion seek certification of a class action]. (STRICKEN BY ORDER #9) (maa) (Edit date 04/15/97])
3/31/97	5	RETURN OF SERVICE executed as to Daniel Nessim 3/18/97. Answer due on 4/7/97 for Daniel Nessim. (nrs)
3/31/97	6	RETURN OF SERVICE executed as to City of Orlando 3/17/97. Answer due on 4/7/97 for City of Orlando (nrs).
4/3/97	7	NOTICE of designation under Local Rule 3.05-TRACK 2 (ctc) (nrs) [Entry date 04/04/97]
4/10/97	8	RESPONSE by Hal Noyes to [3-1] motion to intervene as a plaintiff by Gabe Kaimowitz, [3-2] motion seek certification of a class action. (nrs) [Entry date 04/11/97]
4/14/97	9	ORDER denying [3-1] oral argument requested; [3-1] motion to intervene as a plaintiff by Gabe Kaimowitz; [3-2] motion seek certification of a class action; striking [4-1] support memo.... (Signed by Judge Anne C. Conway.) ctc (nrs) [Entry date 04/15/97]
4/17/97	10	MOTION by Gabe Kaimowitz for disqualification of attorney William J. Sheaffer. STRICKEN by Order #13....

4/17/97	11	MOTION by Gabe Kaimowitz for disqualification of Jude Anne Conway (STRICKEN BY ORDER #13) (nrs) [Entry date 04/18/97] {Edit date 04/21/97]
4/17/97	12	MEMORANDUM by Gabe Kaimowitz in support of [11-1] motion for disqualification of Judge Anne Conway [10-1] motion for disqualification of attorney William J. Sheaffer. (STRICKEN [Edit date 04/21/97]
4/21/97	13	ORDER striking [12-1] support memorandum, [11-1] motion for disqualification of Judge Anne Conway and [10-1] motion for disqualification of attorney William J.Sheaffer. The Clerk shall return the documents to Mr. Kaimowitz . (Signed by Judge Anne C. Conway.) ctc (nrs)
5/2/97	14	NOTICE of voluntary dismissal with prejudice by Hal Noyes. (maa)
5/6/97	--	ENDORSED ORDER grantng [14-1] dismissal with prejudice. (Signed by Judge Anne C Conway) ctc (maa)
5/6/97	--	CASE CLOSED. (maa)
5/6/97	15	NOTICE OF APPEAL of [0-0] endorsed order by Gabe Kaimowitz Appeal Information Sheet Sent to Appellant. Fee Status: pd. *End Vol. 1* (red) [Entry date 05/07/97
6/2/97	--	NOTICE assigning 11th Circuit case number re: [15-1] appeal. USCA NUMBER: 97-2600 (rdo)

UNPUBLISHED--IN RECORD EXCERPTS BELOW
UNITED STATES DISTRICT COURT

FILED
93 SEP 27 AM 11:46
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

GREATER WASHINGTON SHORES HOMEOWNERS ASSOCIATION, et al.,

Plaintiffs.

vs. CASE NO. 88-962-CIV-ORL-22

CITY OF ORLANDO,

Defendants.

_____/

ORDER

As a result of Plaintiffs' counsel's comments and the position asserted by him at the hearing before this Court on September 27, 1993, I have determined that my impartiality toward Plaintiffs' counsel might reasonably be questioned if I were to continue presiding over this case. Accordingly, I hereby recuse myself pursuant to 28 U.S.C. § 455.

DONE AND ORDERED in Chambers in Orlando, Florida, this 27th day of September, 1993.

Anne C. Conway
ANNE C. CONWAY
United States District Judge

Copies to: Counsel of Record
Magistrate Judge Donald P. Dietrich

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

William K. Suter AREA CODE 202
Clerk of the Court 479-3011

March 25, 1998

Johnie A. McLeod
McLeod, McLeod & McLeod
P.O.Box (950), 48 E. Main Street
Apopka, FL 32704

RE: Gabe Kaimowitz v. Orlando, Florida

Dear Mr. McLeod:

The motion "for consolidation of actions in petition for certiorari" received March 24, 1998 is herewith returned. Pursuant to Rule 12.4 of the Rules of this Court, a single petition for a writ of certiorari covering all judgments may be filed when the judgments sought to be reviewed are from the same court and involve identical or closely related questions.

Sincerely,
William K. Suter, Clerk
By: *Christopher W. Vasil*
Christopher W. Vasil
(202) 479-3027

Enclosures
cc: Jeffrey G. Slater
Bill Goodman
Paul Donnelly

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543
February 13, 1998

Re: Gabe Kaimowitz
v. Orlando, Florida, et al.,
Application No. A-590

Dear Mr. Kaimowitz:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on Feb. 13, 1998, extended the time to and including March 17, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By *Gail B. Johnson*
Gail B. Johnson
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543
March 10, 1998

Re: Gabe Kaimowitz
v. Orlando, Florida, et al.,
Application No. A-590

Dear Mr. Kaimowitz:

The application for a further extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kennedy, who on March 10, 1998, extended the time to and including April 10, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By *Gail B. Johnson*
Gail B. Johnson
Assistant Clerk